



WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-147

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section Comm 107.20 (2) indicates that a person who is planning to be located in a technology zone may apply to be certified to claim a tax credit under the technology zone program. It is noted that s. 560.96 (3) (a) 1., Stats., as created by 2001 Wisconsin Act 16, provides that a business must be located in a technology zone to be certified for the credit. It is assumed that a person planning to be located in a technology zone under the rule will need to be actually located in the technology zone in order to receive certification. However, the rule should be clarified to be consistent with the statute.

b. Generally, s. 560.96 (3) (d), Stats., as created by 2001 Wisconsin Act 16, requires the department to enter into an agreement with a business that is certified to receive a technology zone tax credit. The agreement must specify various facts and business projections. It does not appear that the rule contemplates or requires the entry into such an agreement. It appears that the rule should cover such a situation to comply with the statutes.

c. Section Comm 107.40 provides that certain information contained in various documents must be deleted before being made public. However, it would appear that some of the information, such as Social Security numbers or private financial information, contained in a public record would need to be the subject of a balancing test by the record custodian to determine whether particular information should be disclosed or kept confidential under the Open Records Law. Under what authority is such information automatically exempt from disclosure? In addition, the provision should be clarified as to who is required to delete the

information prior to disclosure. Is the department required to do this? It is also suggested that s. 19.36 (6), Stats., might provide a more concise recitation of the separation of information requirements.

2. Form, Style and Placement in Administrative Code

a. Section Comm 107.01 (2) appears to add nothing substantive to the rule. It is suggested that the provision be redrafted in substantially the following form: “This chapter is promulgated pursuant to ss. 560.02 (4) and 560.96, Stats.”

b. In s. Comm 107.02 (5) (intro.), the phrase “of the following” should be inserted immediately preceding the colon.

c. It would appear that s. Comm 107.10 (6) is misplaced. While the section generally deals with the technology zone application and the evaluation and the designation of technology zones, it appears that sub. (6) would be more appropriately placed in subch. III of the rule, relating to tax benefits.

d. In s. Comm 107.21 (1) (intro.), the phrase “all of” should be inserted after the phrase “at least.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Comm 107.31 (1) (a) requires the department to comply with s. 560.96 (2) (b), Stats., when making a determination to increase tax benefits available to the technology zone. However, it is not clear what requirement in that statutory provision is relevant to the increase in tax benefits. Is it referring to the \$5 million tax credit limit? If possible, the requirement that the rule cross-references should be clarified.

b. Section Comm 107.31 (2) (a) 1. refers to “criteria listed under s. Comm 107.30.” It is not readily apparent that any criteria are listed under s. Comm 107.30. Should the cross-reference be instead to a requirement in subch. II? In the alternative, is the cross-reference perhaps referring to a provision of s. Comm 107.30 that does not appear in the rule? It is noted that s. Comm 107.30 contains a sub. (1) but no further subsections. If there are no further subsections, the “(1)” can be deleted. The rule needs to be clarified.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Comm 107.02 (5) (a) in part defines the term “high-technology business” to mean “a person primarily engaged in the activities of research, development or manufacture of advanced products or materials used in . . . energy, environmental . . . medical” How are these products or materials used in “energy,” “environmental,” or “medical”? The phrasing of this definition should be clarified.

b. In s. Comm 107.02 (5) (b), what is a “knowledge-based business”? Is that term defined elsewhere in the rule? How is such a business differentiated from any other business? The rule should be clarified.

c. In s. Comm 107.02 (6), a “new business” is defined as a person that has been in operation for less than one year. Given that the term “person” is defined to include a natural person, what does it mean for a natural person to be in operation for less than one year in the context of the rule? The rule should be clarified.

d. In s. Comm 107.02 (7), it would seem that the definition of “person” refers only to tribal enterprises. Is it possible that the word “and” after the term “insurance company” should be changed to the word “or”? In any event, the provision should be clarified.

e. In s. Comm 107.10 (2), the phrase “for designation as a technology zone” should be inserted after the word “applications.”

f. In s. Comm 107.10 (4), and given the fact that only eight areas in the state may be designated as technology zones, will there only be one round of applications or is the application process an ongoing one? Also, what is the timetable for the evaluation of applications? It would seem that the rule should contain some timetable or time frames for the completion of the application process and the determination of whether an area qualifies as a technology zone. In the alternative, a note to the rule could help explain how the department plans to proceed.

g. In s. Comm 107.11 (1), and other places in the rule, the rule requires additional information or other material to be submitted “by the technology zone.” According to the definition of “technology zone” in s. Comm 107.02 (9), a technology zone is an area. Who is supposed to submit the information for the technology zone? The rule should be clarified.

h. In s. Comm 107.21 (1) (intro.), the word “The” at the beginning of the sentence should be replaced by the word “A.” In addition, the word “will” should be replaced by the word “shall.” Finally, the (intro.) requires that the person’s economic activity meet the criteria specified in s. Comm 107.20 (2). However, one of those criteria is that the technology zone recommends the business for certification. That would not appear to be an economic activity. Perhaps the person applying only needs to meet the “criteria under s. Comm 107.20 (2).” In addition, s. Comm 107.20 (2) would be made more clear if the term “person’s” is inserted before the word “business” in pars. (a) to (c). Finally, is the department satisfied that it will be able to tell whether the business is “new or expanding” based upon the information required to be provided to it in s. Comm 107.21 (1)?

i. Section Comm 107.22 (intro.) should be renumbered s. Comm 107.22 (1), and the remainder of the section renumbered accordingly. In addition, it is not clear how long a certification lasts. For example, is a person certified each year, or does a certification last for three consecutive years? The rule should be clarified. In addition, the phrase “a person has been certified for three consecutive years” should replace the phrase “three consecutive years of certification.”

j. In s. Comm 107.22 (2), the phrase “baseline goals” is used. What are these goals? It is noted that s. 560.96 (2) (d), Stats., as created by 2001 Wisconsin Act 16, requires an agreement between the department and a business that is certified to receive a tax credit under the technology zone program to include provisions relating to the business’s baseline against which growth will be measured. Is this the “baseline goals” the rule refers to? Also, see comment 1. b., above.

k. Section Comm 107.23 (1) (intro.) uses the phrase “person certified under s. 560.96, Stats.” Section Comm 107.31 (1) (intro.), uses the phrase “certified business.” What is the difference between these terms? Do they refer to the same business? The rule should use consistent terminology throughout.